IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 21663 of 1994

Between:

Depot Manager, APSRTC, Ranigunj Depot, Secunderabad.

..... PETITIONER

AND

1 Additional Industrial Tribunal cum- Additional Labour Court Hyderabad, rep. by its Presiding Officer.
2 G. Galaiah S/o. Veera Mallu
C/o. Sri V. Mallik, 3-6-725, Street No. II, Himayatnagar, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of writ of certiorari, and to quash the award dated 24.5.1994 passed in I.D.No. 195/92 on the file of the Additional Industrial Tribunal cum-Additional Labour Court, Hyderabad, the 1st respondent herein, which was published in A.P. Gazette as G.O.Rt.no. 1787 dated 12.7.1994.

Counsel for the Petitioner: MR.V.T.M.PRASAD (S.C.FOR APSRTC)

Counsel for the Respondent No.2: MR.M.SUBBA REDDY

The Court made the following :

ORAL ORDER:

This writ petition is filed by the Depot Manager, APSRTC, Ranigunj, Secunderabad challenging the award of the Additional Industrial Tribunal –cum-Additional Labour Court (hereinafter referred to as 'The Tribunal') in I.D.No.195/92 dated 24-5-1994. The facts as can be seen from the award of the Tribunal are that the 2nd respondent was working as a temporary driver with the petitioner – Corporation on 1-7-1985. On 24-8-1990, the Sub Inspector of Police informed that the 2nd respondent was involved in a criminal case of attempt to murder on 2-4-1987 and that thereafter he was remanded to judicial custody. The petitioner was informed that the 2nd respondent was convicted in C.C.No.154/87 by judgment dated 6-8-1990 with sentence of two years simple imprisonment and fine of Rs.100/- The 2nd respondent is alleged to have concealed these facts to the petitioner-Corporation.

A charge sheet was issued containing two charges which read as under:

"Charge No:1: For having involved in the attempt of murder case on 2-4-1987 and arrested on 10-4-1987 remanded to judicial custody, thereafter convicted and sentenced to undergo two years simple imprisonment and a fine of Rs.100/- by the Assistant Sessions Judge, Nalgonda vide CC No.154/87 on 6-5-90 which constitutes misconduct in terms of Regulation 26 and 28(iv) of the A.P.S.R.T.C. Employee's Conduct Regulations, 1963.

Charge No.2: For having concealed the fact of your arrest on 10-4-1987 due to involvement of committing murder and remanded to judicial custody and convicted and sentenced to undergo two years simple imprisonment and fine of Rs.100/- by the Asst. Sessions Judge, Nalgonda vide CC NO.154/87 dated 6-8-90 which constitutes misconduct in terms of Regulation 26 and (xv) of the APSRTC Employees Conduct Regulations, 1963"

Domestic enquiry was conducted and the 2nd respondent was found guilty of both the charges and consequently the 2nd respondent was removed from service by order dated 14-2-1991, the appeal and review filed by him were rejected.

The 2nd respondent invoked the jurisdiction of the Tribunal under Section

2A(2) of the Industrial Disputes Act. The validity of the domestic enquiry was upheld and consequently, in exercise of powers under Section 11A of the Industrial Disputes Act the Tribunal re-appreciated the evidence on record and examined the matter with regard to the quantum of punishment. It was brought to the notice of the Tribunal that the delinquent (2nd respondent) was acquitted by the Sessions Court in Criminal Appeal No.90/90 by judgment dated 12-9-1991 and as result the Tribunal held that the 1st charge was not proved. The Tribunal found that the 2nd respondent had concealed the fact of his conviction by the Court and that the Depot Manager came to know about it only when the S.I. of police informed the said fact to him. Consequently, the Tribunal held the 2nd charge as proved.

On examining the issue with regard to proportionality of punishment, the Tribunal held that the punishment of removal from service for the charge proved was disproportionate to the gravity of misconduct and as a result the Tribunal substituted the said punishment with one of disallowance of back wages. The period for which the back wages were denied is from the date of removal from service i.e., from 14-2-1991 till the date of award i.e, 24-5-1994, period of three years and three months.

Learned standing counsel for the petitioner Corporation contends that the 2nd respondent ought to have informed the Depot Manager of his having been arrested and that concealment of this fact was a serious misconduct warranting imposition of punishment of removal from service. It is contended that if a lenient view is taken in this matter, it would affect discipline in the organization and encourage other employees to indulge in similar acts of concealment. It is also stated that during the pendency of the writ petition while the 2nd respondent – workman was reinstated into service, he was informed that his reinstatement would be subject to the result of the writ petition.

The punishment of removal from service imposed by the petitioner – corporation was on holding both charges 1 and 2 as proved. The first charge relates to his involvement in criminal case and subsequent conviction and sentence of two years simple imprisonment and fine of Rs.100/- and the second charge relates to concealment of the factum of arrest. It is on both the charges being proved that the petitioner-Corporation had imposed the punishment of removal from service. In so far as the first charge is concerned, the conviction having been set aside in appeal, the Tribunal rightly held that the first charge was not proved. Proportionality of

punishment was examined in respect of the second charge held proved by the Tribunal. The Tribunal, was of the view that the punishment of removal from service for the misconduct of concealment of imprisonment was disproportionate and punishment of denial of back wages, which is for a period of three years three months, was adequate punishment.

This Court, in exercise of its Certiorari jurisdiction under Article 226 of the Constitution of India, does not normally interfere with the discretion exercised by statutory Tribunals under Section 11A of the Industrial Disputes Act unless the punishment substituted by the Tribunal for the one imposed by the employer is such as to shock the conscience of this Court. While concealment of the factum of arrest is undoubtedly a misconduct, which deserves punishment, it cannot be said that the punishment imposed by the Tribunal viz., denial of back wages for 3 years 2 months in substitution of the punishment of removal of service, is one such as to shock the conscience of this Court warranting interference under Article 226 of the Constitution of India, more so, when the 2nd respondent workman has been reinstated into service and has been working with the petitioner-corporation during the pendency of this writ petition for the past eleven years.

The writ petition fails and is accordingly dismissed. No order as to costs.

1-7-2005

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To:

1 Additional Industrial Tribunal cum- Additional Labour Court Hyderabad, rep. by its Presiding Officer.

2. Two C.D. copies